

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF PENNSYLVANIA**

COUNTY OF BUTLER, <i>et al.</i> ,)	
)	
Plaintiffs,)	
)	
v.)	
)	No. 2:20-cv-677-WSS
THOMAS W. WOLF, in his official capacity)	
as Governor of the Commonwealth of)	
Pennsylvania, and RACHEL LEVINE, MD,)	
in her official capacity as Secretary of the)	
Pennsylvania Department of Health,)	
)	Complaint Filed 5/7/2020
Defendants.)	

**MOTION FOR LEAVE TO FILE MEMORANDUM OF LAW IN
SUPPORT OF PLAINTIFFS AS *AMICUS CURIAE* BY EAGLE FORUM
EDUCATION & LEGAL DEFENSE FUND**

Pursuant to Local Rule 7, movant Eagle Forum Education & Legal Defense Fund (“EFELDF”) respectfully seeks this Court’s leave to file the accompanying memorandum of law as an *amicus curiae* in support of the plaintiffs’ opposition to the defendants’ motion to stay this Court’s opinion and declaratory judgment (ECF #79, #80) in plaintiffs’ favor. Although this Court and district courts generally do not have rules allowing or forbidding *amicus* participation, “[t]he right of access to the courts is indeed [an] aspect of the right of petition” under the First Amendment. *California Motor Transport Co. v. Trucking Unlimited*, 404 U.S. 508, 510 (1972), and this Court like other district courts has long accepted *amicus* briefs. *Nat’l Ass’n for Neighborhood Sch., Inc. v. Bd. of Pub. Educ. of Sch. Dist.*, 90 F.R.D. 398, 404-05 (W.D. Pa. 1981) (“any other interested party is invited to participate as *amicus curiae*, and any memoranda received from such sources will be given the consideration which it merits”); *Persico v. Sebelius*, 919 F. Supp. 2d 622, 624 n.1 (W.D. Pa. 2013). After conferring with the parties’ counsel, movant’s counsel reports that the plaintiffs consented to this motion and that the defendants did “not concur” but “doubt[ed] [that they] will file a formal opposition” to this motion.

In support of its motion for leave to file the accompanying memorandum of law as an *amicus curiae*, movant EFELDF states as follows:

1. Since its founding in 1981, EFELDF has consistently defended not only the Constitution's federalist structure, but also its limits on both state and federal power. In the context of the integrity of the elections on which the Nation has based its political community, EFELDF has supported robust protection of speech under the First Amendment and efforts to maximize voter confidence in the electoral process.

2. The proffered EFELDF memorandum focuses on the defendants' draconian and unprecedented restrictions on indoor and outdoor congregations as a violation of the First Amendment during an election season, although some of EFELDF's arguments generalize to the other two counts on which this Court entered a declaratory judgment in the plaintiffs' favor.

3. In addition to distinguishing the authorities on which the defendants rely, *see Amicus Memo.* at 6-7, the EFELDF memorandum also weighs the equities under the rival factors for interim relief. *See id.* at 8-9. Simply put, if the plaintiffs are more likely than the defendants to prevail – as they are – and the equities and public interest weigh in the plaintiffs' favor – as they do – it would be absurd to grant the defendants' stay request when the plaintiffs would be entitled to a preliminary injunction, which is the mirror image of a stay.

4. Movant EFELDF respectfully submits that these issues addressed by its proffered memorandum of law could aid the Court in resolving the vital First Amendment issues presented by this litigation and will not prejudice the parties.

WHEREFORE, for the foregoing reasons, movant Eagle Forum Education & Legal Defense Fund respectfully seeks this Court's leave to file the accompanying memorandum of law as an *amicus curiae*. A proposed order is attached.

Dated: September 21, 2020

Respectfully submitted,

/s/ Lawrence J. Joseph

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*Counsel for Eagle Forum Education & Legal
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CERTIFICATE OF SERVICE

I, Lawrence J. Joseph, do hereby certify that on September 21, 2020, I filed the foregoing motion of Eagle Forum Education & Legal Defense Fund – together with its accompanying memorandum of law and proposed order – with the Clerk of the Court using the CM/ECF system, which I understand to have caused service via ECF on the following counsel for the parties:

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